

[Staff Note: Instead of setting out G.S. 46A-26 (Sale in lieu of actual partition) and G.S. 46A-27 (Partition of part of the real property) in Part 1 of Article 2 of the new Chapter, an alternative approach is to move G.S. 46A-26 (Sale in lieu of actual partition) to the beginning of Part 3 of Article 2 of the new Chapter and replace G.S. 46A-27 (Partition of part of the real property) with the following:

"§ 46A-#. Methods of partition.

In a partition proceeding under this Article, the court shall order one of the following methods of partitioning the real property:

- (1) Actual partition under Part 2 of this Article.
- (2) Partition sale under Part 3 of this Article so long as the requirements of that Part are satisfied.
- (3) Actual partition of part of the property and a partition sale of the remaining part.
- (4) Partition of part of the property, whether by actual partition or by partition sale, and order that the remaining part continue to be held in cotenancy. The court, however, shall not order a cotenant to continue to hold property in cotenancy over the cotenant's objection."]

[Staff Note: An alternative approach is to replace G.S. 46A-56(d) and G.S. 46A-101(d) with the following:

"(d) After confirmation of the report, any party may seek relief from the order of confirmation for mistake, fraud, or collusion by a motion in the proceeding. This relief, however, shall not affect an innocent purchaser for value and without notice."

In Macon v. Edinger, the N.C. Supreme Court stated that both the impeachment procedure in G.S. 46-19 and a motion for relief under N.C. Rule of Civil Procedure 60 could be used to challenge an order confirming the commissioners' report:

We agree ... that the Rules of Civil Procedure apply to special proceedings except when a differing procedure is prescribed by statute. We also agree that in addition to G.S. § 46-19, G.S. § 1A-1, Rule 60(b)(1) also authorizes relief from a final judgment, order or proceeding for mistake, inadvertence, surprise or excusable neglect.

Macon v. Edinger, 303 N.C. 274, 279, 278 S.E.2d 256, 259 (1981) (citation and quotation marks omitted).

In addition to the alternative language set out above, the subsection catchline for G.S. 46A-101(d) could be changed from "Impeachment" to "Motion for Relief".]